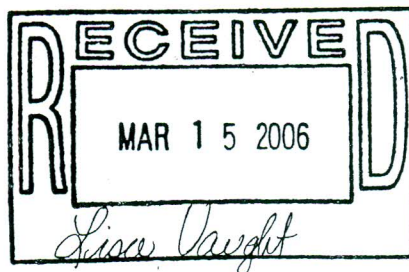


# Alaska Workers' Compensation Appeals Commission

## Annual Report 2005

Filed in the Office of the Lieutenant Governor  
March 15, 2006



Kristin S. Knudsen, Chair  
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- **Introduction**

In 2005, the Alaska State Legislature passed and the Governor signed into law Senate Bill 130 (ch. 10 FSSLA 2005), which created the Alaska Workers' Compensation Appeals Commission within the Department of Labor and Workforce Development, charged with the responsibility of providing adjudication of appeals from the Workers' Compensation Board. *See* AS 23.30.008, AS 23.30.125-128. The legislation went into effect on November 7, 2005. The purpose of the Commission was to provide a faster and more consistent approach to reviewing workers' compensation cases by a balanced panel experienced in workers' compensation law. The Commission is committed to ensuring that "hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered." AS 23.30.001.

The Commission operates under the supervision of a chair, for whom the law prescribes certain duties and goals. *See* AS 23.30.009. One of the chair's duties is to "not later than March 15<sup>th</sup> of each year, make available to the public and file with the lieutenant governor a report regarding the commission for the prior calendar year, including data regarding time periods between initial receipt and final decisions on appeals." AS 23.30.009(c). This is the first annual report of the chair.

- **Appointment of the Commission**

The Commission consists of a chair and four representative members. Each representative member must each have at least 18 months of experience as a member of the Alaska Workers' Compensation Board. Two members represent employees and two members represent employers. The chair must be an attorney who has been engaged in the active practice of law at least five years in the State of Alaska, with experience in workers' compensation law in this state. The Chief Administrative Law Judge announces and reviews the applications for

each vacancy on the Commission, and a list of qualified nominees is forwarded to the Governor for appointment. The Alaska State Legislature must confirm appointees. Due to the staggering of the 5-year terms, there will be a vacancy to be filled on the Commission every year. Due to the need for a balanced panel for every appeal, avoiding vacancies is a concern of the Commission.

As required by law, the Chief Administrative Law Judge forwarded at least two names of qualified nominees to the Governor, who made appointments on Friday, November 18, 2005. The Commission members were sworn in on the following Wednesday, November 23, 2005. The Commission members are awaiting confirmation by the Legislature at the time of this report.

The present representative members of the Commission are:

- Jim Robison, Eagle River, formerly president of the Alaska AFL-CIO and the Alaska State District Council of Laborers; vice president of the Tri Trades Public Service Council and Operating Engineers; commissioner of the Alaska Department of Labor for Governor William Sheffield, employee representative;
- Marc D. Stemp, Bethel, former president and chief executive officer, Bethel Native Corporation; former financial officer for Kootznoowoo, Inc., Angoon, and Ahtna, Inc., Copper Center; treasurer of Bristol Bay Native Corporation; assistant controller for Tesoro Alaska Petroleum; employer representative;
- John Giuchici, Fairbanks, assistant business manager, Local 1547, IBEW/NECA AFL-CIO; previously a power lineman for Grasley & Associates, PDQ Construction, Norcon, Inc., Power City, Southern Electric, Hardline/Meyers, Primary Electric and Golden Valley Electric; employee representative;
- Philip E. Ulmer, Eagle River, registered professional engineer, manager of safety and worker's compensation for GCI; previous national

president, American Society of Safety Engineers and the National Institute for Engineering Ethics; 1994 Engineer of the Year finalist with the Alaska Society of Professional Engineers; employer representative; and,

- Kristin S. Knudsen, Anchorage, former assistant attorney general and workers' compensation hearing officer for the Department of Labor and Workforce Development, admitted to practice in Alaska in 1979 and with more than 20 years experience in workers' compensation law; chair.

The combined prior service of the Commission members and the chair on the Workers' Compensation Board exceeds 50 years of experience of hearing workers' compensation claims in Alaska.

### • **Appeals Filed in the Commission**

In the first six weeks of the Commission's existence, the following appeals were filed:

November 18, 2005: Republic Parking Systems vs. Levine, Appeal No. 05-001

December 1, 2005: Levine vs. Republic Parking Systems, Appeal No. 05-002

December 1, 2005: Jones vs. Frontier Flying Services, Appeal No. 05-003

December 8, 2005: Eagle Hardware vs. Ammi, Appeal No. 05-004

December 19, 2005: Morgan vs. Alaska Regional Hospital, Appeal No. 05-005

December 20, 2005: Smith vs. CSK Auto, Inc., Appeal No. 05-006

December 20, 2005: Tonoian vs. Pinkerton Security et al., Appeal No. 05-007

December 22, 2005: Doyon Drilling Inc. v. Whitaker, Appeal No. 05-008

December 29, 2005: S & W Radiator Shop v. Flynn, Appeal No. 05-009.

Of the above appeals, none had resolved by the end of the reporting period, which is about six weeks. Three hearings were held on subsidiary motions in the

appeals. The average number of days between hearing a motion and issuing a written order was one day during the reporting period.

By the date of the current report, two of the appeals filed in 2005 had settled, final decisions were issued in three of the appeals, a motion to dismiss was filed in one case for failure to complete the appeal was filed in one appeal, and the record had been transmitted and briefing instructions had been issued in the remaining three.

Four of the appeals filed in 2005 were filed by employees representing themselves, without legal counsel, and one by an employee represented by counsel. In each of the five employee-filed appeals, the employer was represented by legal counsel.

Of the four appeals filed by employers in 2005, all the employers were represented by legal counsel, and the opposing employee was represented by legal counsel.

One appeal called for appointment of a chair *pro tem* due to the chair's conflict. Chief Administrative Law Judge Thurbon made the appointment very quickly, and the matter proceeded to a decision without delay.

- **Quarterly Meetings of the Commission**

The Commission held its first quarterly public meeting of the full Commission on Friday December 2, 2005. At this meeting the Commission adopted Emergency Regulations for appeal procedures. The regulations were filed in the Office of the Lieutenant Governor on December 5, 2005. The period for public written comment was left open through January 31, 2006, and an oral hearing for the purpose of taking comment on the regulations was noticed for January 3, 2006.

The Commission decided to undertake quarterly meetings in order to speed the development of the Commission process. Quarterly meetings have been scheduled through February 2007.

- **Other Commission Activity**

The chair of the Commission interviewed potential staff and hired a Commission Clerk (Administrative Assistant), who began work after the reporting period, on January 30, 2006. The chair is grateful for the expert assistance of Janet Parker, Administrative Manager for the Workers' Compensation Division, in this process and throughout the effort to develop the Commission's infrastructure and the willingness of the Division of Workers' Compensation to loan her time to the Commission.

One of the first concerns of the Commission chair was to establish a smooth process for transfer of records on appeal from the Alaska Workers' Compensation Board. The chair is thankful for the good will and valuable assistance of Marie Jankowski, the Workers' Compensation Division's Appeals Clerk, in this effort.

The Commission shares with the Alaska Labor Relations Agency its permanent hearing room located at 1016 W. 6<sup>th</sup> Ave., Anchorage. The staff of the Alaska Labor Relations Agency and the chair have worked closely on the design, building, and furnishing of the hearing room. Building was completed in January with minimal delay. The Commission and the Alaska Labor Relations Agency now have neighboring offices, which results in the ability to share some resources, including assisting in training Commission staff.

Due to the number of pro se appellants, the chair very soon undertook to write a booklet of instructions in simple language on how to file an appeal in the Commission. The first draft of this document was completed by the end of the reporting period. The final version is now available for distribution.

A lawsuit was filed September 30, 2005, by AKPIRG against Governor Murkowski seeking an injunction barring appointment of Commission members and a declaration that the Commission was unconstitutional, *AKPIRG vs. Murkowski*, 3 AN 05-11945. The case has been fully briefed. Oral argument took place on

January 25, 2006. The case is presently awaiting a decision from Superior Court Judge Sen Tan.

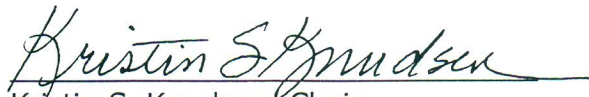
- **Recommendations of the Commission**

In the future annual reports, the Commission will recommend statutory or regulatory changes in procedure needed in relation to its appeal function. It will not make recommendations for, or comment on changes to, substantive workers' compensation law. Future reports can also be expected to contain recommendations resulting from the review of cases appealed, comments to the commission, and observations of the administrative adjudication process. As of the date of this report, no specific recommendations have been developed that are not incorporated in the permanent regulations adopted by the Commission.

- **Conclusion**

In the short period of the Commission's existence in 2005, the Commission set to its work of hearing oral argument, conducting hearings on motions, and issuing decisions. In addition, the Commission adopted emergency regulations to guide appeals from the Alaska Workers' Compensation Board. During the reporting period, it made substantial gains in having its mission-critical processes and infrastructure in place.

Submitted March 15, 2006.



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